

REMARKS/ARGUMENTS

In the most recent Office Action, claims 1-10 were examined. Claims 1-10 stand rejected. Claims 1-10 are amended, and new claims 11-14 are added. Accordingly, claims 1-14 are pending in the present application. No new matter is added.

Claim Rejections – 35 U.S.C. §112

The Office Action states that claims 1-10 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In particular, the Office Action notes several incidents of insufficient antecedent basis in the rejected claims.

Applicants have amended claims 1-10 to overcome the rejection under 35 U.S.C. §112, second paragraph. In particular, Applicants have corrected a lack of antecedent basis for terms in the claims, and restated recitations in the claims to provide a clearer definition of the subject matter regarded as the invention. Entry of the amendments as placing the application in better form for allowance is respectfully requested.

Applicants respectfully believe that the amendments to the claims overcome the rejection under 35 U.S.C. §112, second paragraph, and respectfully requests that it be reconsidered and withdrawn.

Claim Rejections – 35 U.S.C. §103

The Office Action states that claim 1 is rejected under 35 U.S.C. §103(a) as being unpatentable over De Stefano (U.S. Patent No. 5,651,557) in view of Hellstrom (U.S. Patent No. 4,819,988). In particular, the Office Action states that the disclosure by De Stefano shows all of the elements recited in claim 1 with the exception of a height adjustment, which is supplied by Hellstrom in an obvious combination. The rejection is respectfully traversed.

As noted in the Office Action, the device disclosed De Stefano is not adjustable heightwise or arranged to restrict leg openings when lowered, as is recited in claim 1 of the

present invention. The Office Action notes that Hellstrom teaches a restraint device that can be lowered to restrict the size of the leg openings to prevent a child from falling out of the seat, and notes that the combination of the disclosures by De Stefano and Hellstrom would have been obvious to one of ordinary skill in the art at the time the invention was made. However, Applicants submit that there are a number of differences between child restraint systems in shopping carts and child restraint systems in chairs. In fact, applicants submit that the differences are so substantial as to prevent the combination of the two separate arts, and also prevent the restraints from being combined because of the way in which the restraints function to restrain the body.

For example, a chair need not collapse to nest with other chairs, as does a shopping cart. Accordingly, any restraint device must be able to operate with the shopping cart to avoid interference with the collapsing or nesting function. Chair restraint systems do not have these limitations. Also, a chair provides a contoured platform for securing a child in one place that is more or less custom fitted to the child. A shopping cart, however, is designed for storage of items selected during shopping first, and as a child seat second. Accordingly, the shopping cart has a large seat area that is without lateral support or restraint or a supportive back that would otherwise contribute to a restraint system in a chair. In addition, a restraint system in a chair needs to accommodate the force a child can leverage by pushing against the footrest supplied with the chair. A shopping cart has no footrest for the child to push against.

Applicants also note that the disclosure by Hellstrom is directed to a restraint device with arms that extend laterally and towards the back of the chair to overlie the thighs and partially encircle the torso of the occupant (col. 2, lines 47-65). Accordingly, the device by Hellstrom prevents the child from side to side movement of the torso, as well as cooperating with the back of the chair to prevent the child from using the footrest to exert leverage to extract themselves from the restraining device. However, a shopping cart has no footrest, and no lateral restriction, and the invention provides no lateral restriction. Accordingly, one of ordinary skill in the art would not need to solve the problems associated with a footrest and attempt to provide lateral

restraints to prevent the child from escaping by pushing off a footrest. Indeed, a shopping cart cannot use any lateral restriction or projections, especially of the type indicated by Hellstrom, because of compromising the primary function of storing items in the shopping cart and compromising the function of nesting.

Indeed, the most daunting problem with restraints in a shopping cart is to restrict leg movement. Shopping carts are provided in a standard form with wide seat compartments and large leg openings, and a restraint must be able to be effectively used on the shopping cart as provided. Accordingly, a restraint is unable to take advantage of lateral restraints, but instead focuses on leg restriction. In addition, a restraining device must not interfere with the use of the seat as a depository for items selected during shopping or other personal items such as purses, and must not interfere with the collapsible features of the seat used in the nesting of shopping carts. If the device by Hellstrom were incorporated into the shopping cart restraint by De Stefano, the resulting combination would interfere with use of the shopping cart seat as a storage space or repository when not occupied by a child.

In the same way, if the device according to Hellstrom were incorporated into the shopping cart of De Stefano, the collapsible feature of the shopping cart seat would no longer be available. Accordingly, the nesting feature of the shopping cart would be compromised, since the shopping cart seat would not collapse fully.

It should also be noted that the device disclosed by Hellstrom does not restrict leg movement, but fixes the child in position by restraining the child's torso. The legs are still free to move about. However, as noted above, one of the most important features of a restraint in a shopping cart, and in particular according to the present invention recited in claim 1, is to restrain the legs to avoid the child escaping from the restraint and potentially injuring themselves. This is why the device according to the present invention operates to reduce the opening size of the preexisting leg holes in the shopping cart to restrict leg movement to provide a safe child restraint. The device by Hellstrom fails to teach this important feature, and even if combined

with the disclosure by De Stefano does not produce the safety results that are obtained according to the present invention recited in claim 1.

Accordingly, Applicants submit that the device by Hellstrom is designed for specific restraint of a child in a chair, in combination with all the other features of the chair that contribute to restraining the child. The device by Hellstrom does not, in fairness, reduce the leg opening size as much as it works to confine the torso of the child to a particular position in combination with the chair back and tray. In use on a shopping cart, the device according to the present invention does not interfere with the collapsibility of the shopping cart seat or the nesting of shopping carts and serves to reduce the leg opening rather than actually restraining the child into a fixed position.

Applicants therefore submit that it would not be obvious to combine the disclosure by De Stefano with that of Hellstrom to arrive at the invention recited in claim 1 because of all the differences between the two devices and applications, as discussed above. Applicants further submit that even if the device by Hellstrom and De Stefano were combined, the result would not be workable, because it would compromise the usefulness of the shopping cart for the purpose for which it was designed. Applicants therefore submit that the invention recited in claim 1 is patentable over the disclosures of De Stefano and Hellstrom, either alone or in combination, and respectfully requests that the rejection of claim 1 under 35 U.S.C. §103(a) be reconsidered and withdrawn.

The Office Action states that claims 1 and 2 are rejected under 35 U.S.C. §103(a) as being unpatentable over De Stefano in view of Pokrzewinski (U.S. Patent No. 5,203,612). In particular, the Office Action states that it is known to restrict the size of openings in a child's seat to prevent the child from falling out. The Office Action states that it would have been obvious to combine the disclosures by Pokrzewinski and De Stefano to arrive at the invention recited in claims 1 and 2. Applicants respectfully traverse the rejection.

As the Office Action states, De Stefano does not include a safety element that is adjustable heightwise or arranged to restrict the leg openings when lowered. However, the

disclosure by Pokrzywinski shows a restraint device that surrounds the upper thighs and portion of the torso or a waist area of the occupant. As discussed above with regard to the device by Hellstrom in combination with the disclosure by De Stefano, Applicants submit that one of ordinary skill in the art would not be led to combine De Stefano and Pokrzywinski because an intended function of the shopping cart would be compromised. In addition, Applicants refer to the above noted differences between restraint systems in shopping carts and restraint systems in a chair. Applicants note that the restraint disclosed by Pokrzywinski again illustrates the use of a chair back and footrest that contribute to restraint, and contribute to leverage that the child can exert on the restraint, respectively. Indeed, it appears that the device disclosed by Pokrzywinski restrains the child in a fixed position even more completely than the device disclosed by Hellstrom. Accordingly, Applicants submit that the invention recited in claims 1 and 2 is not suggested by De Stefano or Pokrzywinski, either alone or in combination, and that there is no motivation to combine the references to obtain the invention recited in claims 1 and 2. Applicants respectfully submit that claims 1 and 2 should be allowable over De Stefano and Pokrzywinski, either alone or in combination, and respectfully request that the rejection of those claims be reconsidered and withdrawn.

Allowable Subject Matter

The Office Action states that claims 3-10 are allowable if rewritten to overcome the rejection under 35 U.S.C. §112, second paragraph and to include the limitations of the base claim and any intervening claims. Applicants respectfully believe that the recitation of claims 3-10, as amended, clearly states the subject matter of the invention with a reasonable degree of certainty to permit one of ordinary skill in the art to practice the invention, and further believes that claims 3-10 should be allowable as based upon an allowable independent claim. That is, Applicants submit that claim 1 is now allowable and claims 3-10 add further limitations to an allowable claim, thereby being allowable as well. Accordingly, Applicants respectfully request notice of

allowance of claims 3-10 as being patentable over the prior art and conforming with 35 U.S.C. §112, second paragraph.

Conclusion

In view of the above amendments and discussion, Applicants respectfully believe that claims 1-10 are allowable, and earnestly solicits notice to that effect. Applicants have also submitted new claims 11-14 that are believed to patentably recite the present invention over all the cited references. Consideration of these claims on the merits and allowance is respectfully requested. Applicants respectfully believe that the present response addresses all outstanding issues raised in the most recent Office Action. If it is believed that an interview would contribute to progress in the application, the Examiner is requested to contact the undersigned counsel at the number provided below.

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as First Class Mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on January 7, 2004:

Brendan J. Kennedy
Name of applicant, assignee or
Registered Representative


Signature
January 7, 2004
Date of Signature

Respectfully submitted,


Brendan J. Kennedy
Registration No.: 41,890
OSTROLENK, FABER, GERB & SOFFEN, LLP
1180 Avenue of the Americas
New York, New York 10036-8403
Telephone: (212) 382-0700

BJK:gl